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February 20, 1987

Mr. Wayne Kaplan
Premerger Notification Office
Bureau of Competition, Room 301
Federal Trade Commission
Washington, D.C. 20580

Re: Interpretive Advice with Respect to the
Hart-Scott-Rodino Antitrust Improvements
Act of 1976 and the Related Rules

Dear Mr. Kaplan:

As we agreed in our telephone conversation on Tuesday, February 17, 1987, I am setting forth below the facts relating to a proposed tender offer (the "Offer") by a recently organized shell corporation ("Bidco") for shares of a publicly owned company (the "Target") and certain related transactions, which you have advised us need not, based upon the facts set forth below, be reported under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"), and the rules thereunder (the "Rules").

Our client, a large financial institution ("P Corp") having total assets and net sales exceeding \$100 million, recently formed Bidco, a wholly-owned subsidiary, for the purpose of accomplishing the Offer. Prior to the commencement of the Offer, Bidco will execute a merger agreement with Target which will provide, among other things, that Bidco will promptly commence the Offer and, assuming successful

completion of the Offer, that Target will be merged into a wholly-owned, newly-formed shell subsidiary of Bidco. The Offer will be an all cash offer for approximately 80% of the outstanding voting securities of Target at an aggregate purchase price in excess of \$200 million.

Immediately prior to acceptance for payment of the shares of Target in the Offer, F Corp's entire common stock holdings in Bidco will be redeemed at cost (approximately \$1,000) and F Corp will receive a warrant (the "Warrant") exercisable for 75% of the outstanding voting securities of Bidco. Simultaneously therewith, certain members of the management of Target (the "Management Group") will be issued new shares of the common stock of Bidco representing 100% of the then outstanding voting securities of Bidco (25% on a fully diluted basis). Accordingly, upon consummation of the Offer, 100% of the outstanding voting securities of Bidco will be owned by the Management Group. The Management Group will pay an aggregate amount of approximately \$5 million for their new shares of common stock of Bidco.

It is presently expected that F Corp will pay approximately \$4,167,000 for the Warrant and that the Warrant will require payment of an additional amount of approximately \$833,000 upon exercise. F Corp's accountants have advised that, for financial accounting purposes, the Warrant will be deemed a true warrant, i.e., the acquisition of the Warrant will not be treated as an acquisition of the underlying Bidco common stock. The Warrant will be immediately exercisable when issued, and will be non-voting until exercise. However, as noted below, F Corp will have the right to nominate certain directors of Bidco while it holds the Warrant. F Corp has been advised by its accountants that, while holding the Warrant, it will not be required to include Target's financial results in its consolidated financial statements, with the result that, until exercise of the Warrant, Target's losses will not be included in F Corp's consolidated financial statements.

Based upon the facts set forth above, you have confirmed that the formation of Bidco, even if it is deemed subject to Rule 801.40, will not require filings under the Act because no one of the potential joint venturers (i.e., neither F Corp nor any member of the Management Group) will purchase voting securities of Bidco valued at in excess of \$15 million at any point in time when Bidco holds total assets or has annual net sales exceeding \$25 million. Thus, even if the joint venture rules apply (an issue which you did not decide) each such venturer would

be entitled to claim a Rule 802.20 exemption with respect to the formation of Bidco. For this purpose, we have valued the Warrant and the Bidco common shares at their acquisition price.

You have also confirmed that the acquisition by Bidco of voting securities of Target, regardless of the amount purchased, will be exempt because Bidco will not, at the time of acceptance for payment of Target's shares, meet the Act's size-of-person test. Bidco will have no assets other than (i) the cash paid for the Warrant and Management Group's common shares and (ii) loan facilities equal to the balance of the aggregate price to be paid in the Offer. All of such cash and loans will be applied to the Offer and, accordingly, need not be attributed to Bidco for purposes of the size-of-person test.

In this connection, we have advised you that, at the time of acceptance for payment of Target's shares pursuant to the Offer, no single member of the Management Group will own 50% or more of the then outstanding voting securities of Bidco. Also, as previously noted, F Corp's 100% ownership position will have been redeemed in exchange for the Warrant immediately prior to the acceptance for payment of such shares. While F Corp will be entitled pursuant to an agreement with the Management Group to nominate a number of Bidco directors equal to one fewer than one-half of the total number of directors of Bidco, neither F Corp nor any single member of the Management Group will be entitled to appoint a majority of the Board of Directors of Bidco at that time.

We have agreed that any exercise by F Corp of the Warrant would be reportable under the Act at the time of exercise.

As we agreed in our telephone call, I will assume that the conclusions set forth above concerning the application of the Act and Rules to each of the proposed steps in this transaction correctly reflect your views unless I hear to the contrary before the close of business on Friday, February 27, 1987. Please do not hesitate to call me collect at [REDACTED] if I can provide any further information with respect to the described transactions.

Thank you for your assistance.

Sincerely,
[REDACTED]
[REDACTED]
[REDACTED]